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SB 576

FILED

2006 MAR 23 P 4: 28

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
Regular Session, 2006



**ENROLLED**

Committee Substitute for

SENATE BILL NO. 576

(By Senator Jenkins, et al )



PASSED March 9, 2006

In Effect 90 days from Passage

FILED

2006 MAR 23 P 4: 28

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 576**

(SENATORS JENKINS, HARRISON, FOSTER, OLIVERIO, KESSLER  
AND MCKENZIE, *original sponsors*)

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[Passed March 9, 2006; in effect ninety days from passage.]

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AN ACT to amend and reenact §48-1-302 of the Code of West Virginia, 1931, as amended; and to amend and reenact §56-6-31 of said code, all relating to the rate of interest allowed for certain prejudgment and post-judgment awards; providing interest rate for domestic relation judgment obligations; establishing methodology for establishing rates for judgments or decrees generally; allowing exceptions to established interest rate based on prior written agreements; requiring the state Supreme Court of Appeals to annually determine and publish annual interest rate; providing that the interest rate applies for the entire term of the judgment or decree; and providing internal effective dates.

*Be it enacted by the Legislature of West Virginia:*

That §48-1-302 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §56-6-31 of said code be amended and reenacted, all to read as follows:

**CHAPTER 48. DOMESTIC RELATIONS.**

**ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.**

**PART 3. MISCELLANEOUS PROVISIONS RELATING  
TO DOMESTIC RELATIONS.**

**§48-1-302. Calculation of interest.**

1 (a) Notwithstanding any other provisions of the code, if  
2 an obligation to pay interest arises under this chapter, the  
3 rate of interest is ten percent per annum and proportionate  
4 thereto for a greater or lesser sum, or for a longer or  
5 shorter time. Interest awarded shall only be simple  
6 interest and nothing in this section may be construed to  
7 permit awarding of compound interest. Interest accrues  
8 only upon the outstanding principal of such obligation.

9 (b) Notwithstanding any other provision of law, no court  
10 may award or approve prejudgment interest in a domestic  
11 relations action against a party unless the court finds, in  
12 writing, that the party engaged in conduct that would  
13 violate subsection (b), Rule 11 of the West Virginia Rules  
14 of Civil Procedure. If prejudgment interest is awarded, the  
15 court shall calculate prejudgment interest from the date  
16 the offending representation was presented to the court  
17 pursuant to subsection (a) of this section.

18 (c) Upon written agreement by both parties, an obligor  
19 may petition the court to enter an order conditionally  
20 suspending the collection of all or part of the interest that  
21 has accrued on past-due child support prior to the date of  
22 the agreement: *Provided*, That said agreement shall also  
23 establish a reasonable payment plan which is calculated to  
24 fully discharge all arrearages within twenty-four months.  
25 Upon successful completion of the payment plan, the court  
26 shall enter an order which permanently relieves the  
27 obligor of the obligation to pay the accrued interest. If the  
28 obligor fails to comply with the terms of the written  
29 agreement, then the court shall enter an order which  
30 reinstates the accrued interest.

31 (d) Amendments to this section enacted by the Legisla-  
32 ture during the two thousand six regular session shall  
33 become effective the first day of January, two thousand  
34 seven.

## CHAPTER 56. PLEADING AND PRACTICE.

### ARTICLE 6. TRIAL.

#### §56-6-31. Interest on judgment or decree.

1 (a) Except where it is otherwise provided by law, every  
2 judgment or decree for the payment of money, whether in  
3 an action sounding in tort, contract or otherwise, entered  
4 by any court of this state shall bear interest from the date  
5 thereof, whether it be so stated in the judgment or decree  
6 or not: *Provided*, That if the judgment or decree, or any  
7 part thereof, is for special damages, as defined below, or  
8 for liquidated damages, the amount of special or liqui-  
9 dated damages shall bear interest at the rate in effect for  
10 the calendar year in which the right to bring the same  
11 shall have accrued, as determined by the court and that  
12 established rate shall remain constant from that date until  
13 the date of the judgment or decree, notwithstanding  
14 changes in the federal reserve district discount rate in  
15 effect in subsequent years prior to the date of the judg-  
16 ment or decree. Special damages includes lost wages and  
17 income, medical expenses, damages to tangible personal  
18 property and similar out-of-pocket expenditures, as  
19 determined by the court. If an obligation is based upon a  
20 written agreement, the obligation shall bear a prejudgment  
21 interest at the rate set forth in the written agreement until  
22 the date the judgment or decree is entered and, thereafter,  
23 the judgment interest rate shall be the same rate as  
24 provided for in this section.

25 (b) Notwithstanding the provisions of section five, article  
26 six, chapter forty-seven of this code, the rate of interest on  
27 judgments and decrees for the payment of money, includ-  
28 ing prejudgment interest, is three percentage points above

29 the Fifth Federal Reserve District secondary discount rate  
30 in effect on the second day of January of the year in which  
31 the judgment or decree is entered: *Provided*, That the rate  
32 of prejudgment and post-judgment interest shall not  
33 exceed eleven percent per annum or be less than seven  
34 percent per annum. The administrative office of the  
35 Supreme Court of Appeals shall annually determine the  
36 interest rate to be paid upon judgments or decrees for the  
37 payment of money and shall take appropriate measures to  
38 promptly notify the courts and members of the West  
39 Virginia State Bar of the rate of interest in effect for the  
40 calendar year in question. Once the rate of interest is  
41 established by a judgment or decree as provided in this  
42 section, that established rate shall thereafter remain  
43 constant for that particular judgment or decree, notwith-  
44 standing changes in the Federal Reserve District discount  
45 rate in effect in subsequent years.

46 (c) Amendments to this section enacted by the Legisla-  
47 ture during the year two thousand six regular session shall  
48 become effective the first day of January, two thousand  
49 seven.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Randy White*  
.....  
Chairman Senate Committee

*R. Berry*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Daniel P. Ebbels*  
.....  
Clerk of the Senate

*Bryce D. Bur*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*Robert K.*  
.....  
Speaker House of Delegates

The within *is approval* ..... this the *23rd*  
Day of *March* ....., 2006.

*Paul H. Handberg*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 17 2006

Time 11:00 am